



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0204; FRL-9969-03-Region 9]

Interim Final Determination to Defer Sanctions; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination to defer the imposition of offset and highway sanctions in the Los Angeles – South Coast air basin (“South Coast”) based on a proposed approval of revisions to the South Coast portion of the California State Implementation Plan (SIP) published elsewhere in this Federal Register. The revisions concern Clean Air Act (CAA) reasonably available control measures/reasonably available control technology (RACM/RACT) and reasonable further progress (RFP) requirements for the 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in the South Coast.

DATES: This interim final determination is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, comments will be accepted until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0204 at <http://www.regulations.gov>, or via email to Wienke Tax, Air Planning Office, at tax.wienke@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

I. Background

On April 14, 2016 (80 FR 22025), we published a final action to partially approve and partially disapprove SIP revisions submitted by California to address CAA Moderate area attainment plan requirements for the 2006 24-hour PM_{2.5} NAAQS in the South Coast nonattainment area (“2012 PM_{2.5} Plan”). As part of that action, we disapproved two elements of the 2012 PM_{2.5} Plan because they did not fully meet the requirements for RACM/RACT-level controls under sections 189(a)(1)(C) and 172(c)(1) of the CAA and thus also did not meet the requirement for RFP under section 172(c)(2) of the CAA. This disapproval action became effective on May 16, 2016, and started a sanctions clock for imposition of offset sanctions 18 months after May 16, 2016, and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31. Therefore, offset sanctions will apply on

November 16, 2017, and highway sanctions will apply on May 16, 2018, unless the EPA determines that the deficiencies forming the bases for the disapprovals have been corrected.

On March 17, 2017, the State of California submitted, as a revision to the California SIP, amendments to the South Coast Air Quality Management District's (SCAQMD or "District") Regional Clean Air Incentives Market (RECLAIM) program, which consists of SCAQMD rules 2000 to 2020 and applies to stationary sources that emit at least four tons per year of nitrogen oxides or sulfur oxides in the South Coast. Additionally, on May 22, 2017, CARB submitted the SCAQMD's public draft version of the "Supplemental RACM/RACT Analysis for the 2006 24-Hour PM_{2.5} and 2008 8-Hour Ozone Standards" ("2017 RACT Supplement").¹ We proposed to approve the revised RECLAIM rules on June 6, 2017 (82 FR 25996), and fully approved these rules on September 14, 2017 (82 FR 43176). We proposed to approve the 2017 RACT Supplement on June 15, 2017 (82 FR 27451), and fully approved it on September 20, 2017 (82 FR 43850).²

In the Proposed Rules section of today's Federal Register, we are proposing to approve the RACM/RACT and RFP demonstrations in the 2012 PM_{2.5} Plan based on our final approvals of the revised RECLAIM rules and the 2017 RACT Supplement, because we believe these SIP submissions correct the deficiencies identified in our April 14, 2016 partial disapproval action. Based on today's proposed approval, we are taking this interim final rulemaking action, effective on publication, to defer the imposition of the offset sanctions and highway sanctions triggered by our April 14, 2016 partial disapproval.

¹ California submitted the 2017 RACT Supplement to address deficiencies identified in both the EPA's April 14, 2016 partial disapproval of the 2012 PM_{2.5} Plan and the EPA's separate proposal to partially disapprove the District's "2016 AQMP Reasonably Available Control Technology (RACT) Demonstration," which California had submitted to address RACT requirements under CAA section 182(b) and (f) and 40 CFR 51.1112 for the 2008 ozone NAAQS in the South Coast and Coachella Valley nonattainment areas (*see* 82 FR 27451, June 15, 2017).

² California adopted the 2017 RACT Supplement on July 7, 2017, and submitted it to the EPA on July 27, 2017.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of the RACM/RACT and RFP demonstrations in the 2012 PM_{2.5} Plan, we would take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, we will take final action to approve the RACM/RACT and RFP demonstrations in the 2012 PM_{2.5} Plan, and all sanctions and sanction clocks related to the May 16, 2016 disapproval action with respect to these elements of the 2012 PM_{2.5} Plan will be permanently terminated on the effective date of the final approval.

II. EPA Action

We are making an interim final determination to defer the imposition of CAA section 179 sanctions associated with our partial disapproval of the 2012 PM_{2.5} Plan based on our concurrent proposal to determine that our prior approvals of the District's revised RECLAIM rules and 2017 RACT Supplement correct the deficiencies that initiated sanctions clocks.

Because the EPA has preliminarily determined that the State has corrected the deficiencies previously identified in the EPA's partial disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action the EPA is providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's revised RECLAIM rules and 2017 RACT Supplement and, through a separate action, is proposing to find that the State has

corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions when the State has most likely taken appropriate action to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's actual submission addressing those deficiencies. Therefore, the EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submission addressing the deficiencies. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers federal sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such

good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 26, 2017.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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